

SERVICE DATE - JUNE 23, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 579X)

CSX TRANSPORTATION, INC.--ABANDONMENT EXEMPTION--
IN PARKE AND VERMILLION COUNTIES, IN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 21, 2000

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 1.17-mile line of its railroad between milepost BD-191.41 at Montezuma and milepost BD-192.58 at Hillsdale in Parke and Vermillion Counties, IN. Notice of the exemption was served and published in the Federal Register on May 26, 2000 (65 FR 34249-50). The exemption was scheduled to become effective on June 25, 2000, but a formal expression of intent to file an offer of financial assistance (OFA) has timely been filed by the Parke County Economic Redevelopment Commission (PCERC), a unit of Parke County Government, to purchase the entire line, which has the effect of staying the effective date of the exemption for 10 days until July 5, 2000.¹ PCERC simultaneously requested that CSXT provide it with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs are due 30 days after publication of the notice of exemption in the Federal Register. PCERC's OFA is due by June 26, 2000.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 2, 2000. In the EA, SEA states that the U.S. Fish and Wildlife Service (FWS) has expressed several concerns about possible impacts during salvage operations. FWS indicates that the Federally-listed endangered species the Indiana bat (*Myotis sodalis*), bald eagle (*Haliaeetus leucocephalus*), and the fat pocketbook pearly mussel (*Potamilis capax*) may be within the range of the proposed abandonment and that salvage operations should be prohibited during the period April 15 through September 15. FWS also states that the right-of-way crosses the Wabash River and Leatherwood Creek, and has indicated that in-channel work should be avoided during the fish spawning season from April 1 through June 30, and best management practices should be used to avoid or minimize runoff of sediment or toxic substances into the waterways. FWS further states that there are three forested wetlands adjacent to the proposed abandonment and that CSXT should avoid all wetland impacts including drainage, filling, tree clearing, and disposal of debris, occurring within the proposed project area during salvage operations. Therefore, SEA recommends that the conditions be imposed as recommended.

¹ 49 CFR 1152.27(c)(2)(i).

SEA also states that the Indiana State Historic Preservation Officer (SHPO) has identified the Wabash River Bridge and the CH&D Depot as potentially eligible for inclusion in the National Register of Historic Places. Therefore, SEA recommends that CSXT be required to retain its interest in and take no steps to alter the historic integrity of the Wabash River Bridge and the CH&D Depot until completion of the 106 process.

SEA initially recommended in the EA that CSXT be required to consult with the U.S. Army Corps of Engineers (Corps) to determine if the proposed abandonment is consistent with the Federal, state and local water quality standards, and if permits are required under section 404 of the Clean Water Act. In a letter filed June 5, 2000, CSXT attached a letter dated May 18, 2000, in which the Corps states that, based on its review, no Department of the Army permit is required for the abandonment area. Therefore, according to SEA, the section 404 condition need not be imposed.

In the EA, SEA concluded that the right-of-way may be suitable for other public use following abandonment in this proceeding. On May 22, 2000, the Indiana Department of Transportation (IndOT) filed a request for a 180-day public use condition under 49 U.S.C. 10905.² By petition filed June 7, 2000, the Indiana Trails Fund, Inc. (ITF) late-filed a request for the issuance of a notice of a interim trail use (NITU) for the entire line under the National Trails System Act, and for a public use condition in order to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail.³ By facsimile dated June 20, 2000, CSXT stated that, although an OFA may be filed in this proceeding, it is willing to negotiate with ITF for interim trail use.

IndOT and ITF request that CSXT be prohibited from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms. ITF also requests that CSXT be barred from removing or destroying any trail-related structures, such as bridges, culverts and tunnels, for a 180-day period from the effective date of the abandonment exemption. ITF states that it needs the full 180-day period allowed because it has not had the opportunity to coordinate efforts with the other interested groups and commence negotiations with CSXT. ITF submitted a statement indicating its willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (if the user is immune

² On June 5, 2000, IndOT clarified that its request is for public use.

³ The May 26 notice provided that trail use/rail banking requests had to be filed by June 5, 2000. The Board will, however, accept filings after the due date when good cause is shown. Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997). Because there is no indication that ITF's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company--Abandonment Exemption--In Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

from liability, it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.

The trail use request by ITF complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate. Therefore, a NITU may be issued. The parties may negotiate an agreement during the 180-day period to be established in a subsequent decision as discussed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached during the 180-day period, CSXT will be permitted to fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonment—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed for abandonment and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1142.28(a)(2). As a result of the submissions by InDOT and ITF, the requirements for both a public use condition and a NITU have been satisfied and, therefore, imposition of both would be appropriate, commencing with the effective date of the exemption. An OFA takes priority, however, over any requests for a NITU and a public use condition. Therefore, issuance and effectiveness of a NITU and a public use condition will be delayed until the OFA process has been completed. If agreement is reached on sale or subsidy of the line, public use and trail conditions would be unnecessary and unavailable. If no OFA is filed or if no agreement is reached on the OFA, the appropriate decision and notice of interim trail use or abandonment establishing the 180-day negotiating period will be issued.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that CSXT shall: (a) be prohibited from conducting salvage operations between the periods of April 15 thru September 15 to prevent the possible incidental

take of the endangered species located within the right-of-way; (b) be prohibited from conducting in-channel work during the fish-spawning season from April 1 thru June 30 and best management practices shall be used to avoid or minimize runoff of sediment or toxic substances into the waterways; (c) prior to salvage operations consult with the FWS to devise a plan so that salvage operations would avoid all wetland impacts including drainage, filling, tree clearing, and disposal of debris occurring within the proposed project area; and (d) retain its interest in and take no steps to alter the historic integrity of the Wabash River Bridge and the CH&D Depot until completion of the section 106 process.

3. The requests for issuance of a notice of interim trail use and a public use condition are held in abeyance pending completion of the OFA process.

4. If the OFA process terminates, a decision effective on its service date will be issued to impose the interim trail use and public use conditions.

5. PCERC's OFA is due on or before June 26, 2000.

6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary